

Priority claims
Marital Settlement Agr.
State court jurisdiction
Support obligation

Karen Jennings, Case No. 602-69588-fra13

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Debtor and her former husband were divorced prior to the petition date. The parties had entered into a Marital Settlement Agreement (MSA) during the course of the dissolution proceeding. As the matter before the Circuit Court was uncontested, the MSA and a form of judgment were presented *ex parte* to the judge. The MSA was incorporated into the judgment, which directed the parties to perform each and every covenant of the agreement.

¶ 1 of the MSA provided that each party waived any spousal support rights he or she may have against the other party. ¶ 7 of the MSA provided for the assumption by each party of certain debts and an agreement to hold the other party harmless therefrom. Subsection 7.3 of ¶ 7 provided that the debts named in that paragraph were to be deemed in the nature of support and would not be dischargeable should either party file bankruptcy.

Debtor thereafter filed bankruptcy under chapter 7 and later converted to chapter 13. Debtor's ex-husband filed a \$30,000 priority claim for the debts from which the Debtor had agreed to hold him harmless. Debtor objected to the claim on the grounds that the claim should be classified as nonpriority.

Citing Ninth Circuit case law, the bankruptcy court noted that state courts do not have jurisdiction to determine issues constituting core areas of bankruptcy, such as administration of the automatic stay and allowance or discharge of claims. The provisions of the MSA purporting to make the assumed debts nondischargeable in advance of any bankruptcy being filed were therefore unenforceable. As the priority of claims set out in Code § 507 is also a core bankruptcy matter, the MSA cannot be enforced to the extent it attempts predetermination of the priority of a claim.

As to whether the debts were in the nature of support, and thus entitled to priority treatment, the court noted that determination of the matter is strictly a matter of federal law, with the court looking to the intention of the parties and the state court for guidance. In the present case, the court found that the parties' actual intent was to make the obligation to

indemnify the other party for certain debts nondischargeable, rather than to provide support. Moreover, in a contested dissolution proceeding, the state court would not have provided an award of support to Debtor's ex-husband given the facts of the case.

Finding that the obligation of Debtor to indemnify the ex-husband for certain debts was not in the nature of support, Debtor's objection to the claim was sustained. Ex-husband was allowed a nonpriority claim in the amount of \$30,000.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
KAREN JUNE JENNINGS,) 02-69588-fra13
Debtor.) MEMORANDUM OPINION

Debtor objects to the assertion of her former husband that his claim, based on the judgment dissolving their marriage, is entitled to priority. The matter was heard on December 11, 2003, at which time both parties presented testimony and other evidence. After reviewing the record, I conclude that the claim is not entitled to priority, and that the objection should be sustained.

I. BACKGROUND

The marriage of Debtor Karen Jennings and Claimant Patrick B. Murray was dissolved by a judgment of the Circuit Court for Lane County, Oregon filed on January 8, 2001. They had been married for three years. There were no children of this marriage, although each party had at least one child from a former marriage. At the time of the dissolution, Claimant's annual income was about twice that of the Debtor.

1 In the course of the dissolution proceeding, the parties
2 executed a Marital Settlement Agreement ("MSA"), dated November 3,
3 2000. As no matter before the Circuit Court was contested, the MSA
4 and a form of judgment were presented *ex parte* to a judge of the
5 Circuit Court. The MSA was incorporated into the judgment pursuant
6 to ORS 107.104 and 107.105. The judgment directs each party to
7 "perform each and every covenant" of the agreement.

8 At issue here are two provisions of the MSA:

9 ¶1: **SPOUSAL SUPPORT AND INHERITANCE.** Each
10 party waives any spousal support or inheritance rights
that [sic] party might have against the other party.

11 * * *

12 ¶ 7 **DEBTS.** Husband and wife shall assume
13 as their sole and separate obligation [sic], holding
the other harmless therefrom, any and all debts
14 incurred by that party after the separation on October
7, 2000.

15 7.1 Wife agrees to pay and hold Husband
harmless from the following obligations in the
16 approximate amount as noted:

17 ATT Platinum, approximate balance.....\$14,000.00
1 USA, approximate balance.....\$ 16,000.00

18 7.2 Husband agrees to pay and hold Wife
harmless from the following obligations in the
19 approximate amounts as noted:

20 MBNA, approximate balance.....\$ 15,000.00
21 [real property taxes on residence retained by
debtor]..... unknown

22 7.3 **Obligation is non-Dischargeable.** The
23 obligation of each party to hold the other harmless
from the debts and obligations specified in this
24 paragraph shall be deemed to be in the nature of
support and shall not be dischargeable in bankruptcy
25 by the other party.
26

1 Debtor did not pay all of the obligations specified in the
2 MSA. She filed her petition for relief under Chapter 7 of the
3 Bankruptcy Code on December 12, 2002 showing both AT&T and First USA
4 Bank as creditors. On June 1, 2003, Debtor moved to convert the
5 plan to one under Chapter 13, and submitted a plan of reorganization
6 providing for payments to the trustee of \$125.00 per month for 36
7 months. The estimated dividend to unsecured, non-priority creditors
8 was 2% of such creditors' allowed claims. The only objection to
9 confirmation was filed by the trustee. These objections were
10 resolved between the trustee and Debtor, and an order confirming the
11 plan was entered on September 23, 2003.¹

12 Claimant filed Claim #3 on September 25. The claim seeks
13 payment of \$30,000, based on the Judgment of Dissolution and MSA,
14 and asserts that the claim is subject to priority as support owed to
15 a former spouse. 11 U.S.C. § 507(a)(7). Debtor objects to the
16 claim of priority, but not the amount owed. (Doc. #26)

17 II. DISCUSSION

18 1. Priority Claims in Chapter 13 Cases

19 Code § 507(a) sets out the priority of certain types of
20 claim. In particular, § 507(a)(7) extends priority treatment to

21 [A]llowed claims for debts to a spouse, former spouse,
22 or child of the debtor, for alimony to, maintenance
23 for, or support of such spouse or child, in connection
with a separation agreement, divorce decree or other

24 ¹Claimant did file an objection on September 26, after the order was
25 entered, and after the time required by court order for filing objections. The
26 Court has elected to treat the objection as a motion for revocation of
confirmation. At the parties' request, that matter was set for hearing after the
claim objection is decided.

1 order of a court of record, determination made in
2 accordance with State or territorial law by a
3 governmental unit, or property settlement agreement,
but not to the extent that such debt -

* * *
4 (B) includes a liability designated as
5 alimony, maintenance or support, unless such liability
is actually in the nature of alimony, maintenance or
support.

6 In chapter 13 cases, the plan must provide for payment in
7 full of priority claims. 11 U.S.C. § 1322(a)(2). If the claim
8 described here is allowed as a priority claim, payments under the
9 plan as confirmed will not be sufficient. The debtor will be
10 required either to contribute substantially higher plan payments, or
11 reconvert the case to one under chapter 7.

12 2. Effect of Marital Settlement Agreement and Judgment of
13 Dissolution

14 Claimant's position is that the MSA and the Judgment
15 incorporating it made a determination that the obligation set out in
16 ¶ 7 of the MSA was "in the nature of support." The determination of
17 the Circuit Court is, Claimant argues, binding on the parties and
18 this Court. Debtor argues that the obligation is not, in fact, in
19 the nature of support, and not entitled to priority treatment. The
20 Claimant's arguments fail because neither the Circuit Court nor the
21 parties have the power to establish the priority of the claim in
22 advance of any bankruptcy proceeding.

23 A. *The Circuit Court had no jurisdiction to determine*
24 *priority.* Core areas of bankruptcy and bankruptcy procedure are
25 within the exclusive jurisdiction of the bankruptcy courts. *In re*
26 *Gruntz*, 202 F.3d 1074 (9th Cir. 2000) (Automatic Stay), *In re*

1 *Dunbar*, 245 F.3d 1058 (9th Cir. 2001) (Automatic Stay), *In re*
2 *McGhan*, 288 F.3d 1172 (9th Cir. 2002) (Discharge). In each of these
3 cases, the Court of Appeals has upheld the principle that "state
4 courts should not intrude upon the plenary power of the federal
5 courts in administering bankruptcy cases by attempting to modify or
6 extinguish federal court orders *such as* the automatic stay." *In re*
7 *McGhan*, 288 F.3d at 1179 (quoting from *Gruntz*, 202 F.3d at 1088
8 (emphasis in original)). The *McGhan* court goes on to state that the
9 state court lacked authority to modify or dissolve a discharge
10 injunction by finding that a particular claim was not discharged due
11 to lack of notice to the claimant of the commencement of the
12 bankruptcy proceeding.

13 The priority of claims set out in Code §507 is a core
14 bankruptcy matter, as much as are administration of the automatic
15 stay and allowance or discharge of claims. Since the federal courts
16 have exclusive jurisdiction to determine the priority of claims, a
17 state court judgment purporting to establish priority is not
18 binding, and is subject to collateral attack in federal court. See
19 *Gruntz*, 202 F.3d at 1079-1080.

20 B. *Settlement provisions waiving discharge are*
21 *unenforceable*. As a matter of public policy, an agreement in
22 advance of a bankruptcy case that a particular claim is not subject
23 to discharge is not enforceable. *In re Huang*, 275 F.3d 1173, 1176
24 (9th Cir. 2002), *Hayhoe v. Cole*, 226 B.R. 647, 651-54 (BAP 9th Cir.
25 1988). The Court of Appeals observed in *Huang* that "This
26 prohibition of prepetition waiver has to be the law; otherwise

1 astute creditors would routinely require their debtors to waive."
2 The logic of these cases applies with particular force in the
3 context of assignment of priority. If creditors were permitted to
4 insist in advance on priority treatment of their claims, the
5 priority scheme mandated by the Bankruptcy Code would founder.
6 Worse, the agreement does more than enhance the condition of a
7 particular claimant, but also shoulders aside the claims of others,
8 with no opportunity to be heard. The MSA cannot be enforced to the
9 extent it attempts predetermination of the priority of the claim.²

10 3. The Claim Is Not in the Nature of Support

11 It remains to be determined, without resort to the MSA or
12 Judgment, whether the claim is entitled to priority. Although the
13 question of whether a claim is in the nature of support for purposes
14 of Code § 507(a)(7) is strictly a matter of federal law, *In re*
15 *Williams*, 703 F.2d 1055 (8th Cir. 1983), federal courts look to
16 state law and the intent of the parties to inform their analysis. *In*
17 *re Seixas*, 239 B.R. 398, 404 (BAP 9th Cir. 1999)(citing *Shaver v.*
18 *Shaver*, 736 F.2d 1314, 1316 (9th Cir. 1984)). The Claimant has the
19 burden of proving, by a preponderance of the evidence, that the
20 claim is entitled to priority. See *In re Prickett*, 2000 WL 33712200
21 (Bankr. D.Idaho 2000)(citing *In re Holm*, 931 F.2d 620, 623 (9th Cir.
22 1991)).

23 In a contested dissolution proceeding, a state court takes a
24 number of factors into consideration in determining whether to award

25 ²Note that state law precludes enforcement of a marital settlement agreement
26 which contravenes public policy. ORS 107.104(1)(B)

1 spousal support, including duration of the marriage and income of
2 the parties:

3 In determining the amount and duration of spousal
4 support, ORS 107.105(1)(d)(C) provides that [the state
5 court] may consider, among other things, the duration
6 of the marriage, the age and health of the parties,
7 the standard of living established during the
8 marriage, the relative income and earning capacities
9 of the parties, the parties' training, employment
10 skills and work experience, and '[a]ny other factors
the court deems just and equitable.' ORS
107.105(1)(d)(C). The purpose of the award is "not to
eliminate all disparities in the parties' incomes or
to enable one party to look indefinitely to the other
for support, if self-support at a reasonable level is
or will be possible." See *Ley and Ley*, 133 Or.App.
138, 141, 890 P.2d 440 (1995).

11 *Matter of Marriage of Susanne Marie Roppe and Randall Albert Roppe*,
12 186 Or.App.632, 636, 64 P.3d 1145, 1146 (2003).

13 An Oregon court would not have required the Debtor to make
14 support payments to the Claimant had the dissolution been contested,
15 given the facts of this case. At the time the parties' marriage of
16 barely three years ended, Claimant's income was far greater, and
17 more regular, than the Debtor's. No other factors considered by
18 the state court were, on the record before me, present
19 at the time of the parties' dissolution of marriage which would lead
20 the court to order the Debtor to provide support to Claimant.

21 As to the parties' intent, the only clear expression in the
22 agreement is that they did not intend for either to pay or receive
23 spousal support. What was intended was that the obligation to
24 indemnify each other against certain obligations not be discharged
25 in bankruptcy. As seen, this they cannot do.
26

1 The Claimant argues that payment of the credit card debt -
2 which, presumably, both parties owe jointly - is necessary for his
3 support, because non-payment by the Debtor adversely affects his
4 access to credit. However, this adverse effect was likely to occur
5 in any event. The MSA did not impose any deadline for payment, and
6 the parties contemplated that payment in full could take up to five
7 years. The mere fact that Debtor's failure to pay would result in
8 pressure from the parties' mutual creditors does not mean that the
9 payment obligation is in the nature of support. Every unpaid
10 obligation brings with it a measure of economic distress. If this
11 distress alone were sufficient to make the obligation one of
12 support, then virtually all claims between former spouses might
13 qualify. This was not Congress's intent. The language of
14 11 U.S.C. § 507(a)(7) clearly limits priority to payments which are,
15 in fact, needed for support. The record in this case does not
16 sustain a finding that the claim so qualifies.

17 Claimant relies on an unpublished opinion of the District
18 Court for the proposition that the Bankruptcy Court should not look
19 beyond the clearly expressed intention of the state court. *In re*
20 *Peter*, Dist. Court No. 02-6295-AA (D. Or. 2002). Whether an opinion
21 of a District Court judge is binding in subsequent cases is subject
22 to some debate. See *In re Barakat*, 173 B.R. 672 (Bankr. C. D. Cal.
23 1994). Whatever the general principle, *Peter* should not be applied
24 here, for a number of reasons: First, Circuit Court authority
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1 appears to be clearly to the contrary.³ This Court may consider the
2 intent of the parties or the court below, but is not bound by
3 either. Moreover, *Peter* involved a contested *pendente lite* order,
4 while the case at bar involves ratification of a settlement
5 agreement containing unlawful terms. Given the prohibition of
6 clauses waiving bankruptcy rights, and the statutory command not to
7 enforce such provisions, the State court cannot be said to have
8 intended paragraph 7 of the MSA to be effective.

9 IV. CONCLUSION

10 The provision of the Marital Settlement Agreement
11 characterizing Debtor's obligation to Claimant as "in the nature of
12 support" is unenforceable. Claimant has not demonstrated that the
13 obligation is in fact in the nature of support. Accordingly, the
14 Debtor's objection to the claim will be sustained.

15 This opinion sets out the Court's findings of fact and
16 conclusions of law. An order shall be entered allowing Mr. Murray
17 an unsecured, non-priority claim in the amount of \$30,000.

21 FRANK R. ALLEY, III
22 Bankruptcy Judge
23
24

25 ³ A review of the record in the *Peter* case reveals that the holdings of the
26 Court of Appeals in *Gruntz* and subsequent cases were not raised before the
District Court.